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Total Number of Pages in This Submission

20

Application Number	10/036,815
Filing Date	10/19/2001
First Named Inventor	Wayne E. Fisher
Art Unit	2163
Examiner Name	Uyen T. Le
Attorney Docket Number	39802-P005US (f/k/a M-11460US)

### ENCLOSURES (Check all that apply)

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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Winstead Sechrest & Minick P.C.		
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Printed name	Michael P. Adams		
Date	July 7, 2006	Reg. No.	34,763

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant(s): Fisher, Wayne E.

Assignee: NEON Enterprise Software, Inc.

Title: Ensuring That A Database And Its Description Are Synchronized

Serial No.: 10/036,815 Filing Date: October 19, 2001

Examiner: Uyen T. Le Group Art Unit: 2163

Docket No.: 39802-P005US Confirmation No.: 4940  
(f/k/a M-11460 US)

Dallas, Texas  
July 7, 2006

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**AMENDED APPEAL BRIEF**  
**RESPONSIVE TO NON-COMPLIANCE DATED 6/7/2006**

**I. REAL PARTY-IN-INTEREST**

The real party in interest is the assignee, NEON Enterprise Software, Inc. (f/k/a Peregrine Bridge Transfer Corporation), as named in the caption above. Appellant also attaches hereto as Exhibit A, a copy of the Notice of Recordation of Assignment Document, making a Patent Office recordation date of July 1, 2004 and a mailing date of January 5, 2005, recording a patent name change, which reflects that NEON Enterprise Software, Inc. is the current assignee.

**II. RELATED APPEALS AND INTERFERENCES**

Based on information and belief, there are no appeals or interferences known to Appellant, the Appellant's legal representative, or assignee that could directly affect or be directly affected by or have a bearing on the decision by the Board of Patent Appeals in the pending appeal.

### III. STATUS OF CLAIMS

Claims 1-18 are pending in the application. Claims 1-18 stand rejected. Claims 1-18 are appealed.

### IV. STATUS OF AMENDMENTS

In an Office Action dated April 21, 2004, claims 1-18 were first rejected under either 35 U.S.C. § 102(e) or 35 U.S.C. § 103 as being unpatentable over Kim et al. (US 2002/0059279). In response to Appellant's Response to Office Action dated September 21, 2004, claims 1-18 were then rejected under 35 U.S.C. § 101, in a January 27, 2005 Office Action. In a May 27, 2005 Response to Office Action, Appellant's amended claims 1, 2 and 9. Next, in the Examiner's Final Office Action, dated August 26, 2005, claims 1-18 were rejected under: (i) 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement; and (ii) 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,745,748 to Ahmad et al. ("*Ahmad*").

### V. SUMMARY OF CLAIMED SUBJECT MATTER

P. 18, line 27 through p. 20, line 15 of the Description of the Preferred Embodiments in Appellant's application states:

"[T]he present invention relates to a method of verifying that the correct IMS control blocks are used when processing an IMS HDAM or HIDAM database.

As is well known in the art, prior to loading an IMS database there are a number of administrative functions which must be performed. One of those functions is the creation of a description of the proposed database. This description is referred to as a Data Base Description (DBD). The database description may also be referred to as the database definition. The DBD contains a number of source statements which describe the physical characteristics of the database. These source statements must be assembled and link edited, and the resulting load module is placed

into a DBD library. Subsequently, the DBD may be converted into a Data Management Block (DMB), by the IMS-provided ACB Generation utility program. As illustrated in Figs. 10 and 11, the resulting DMB is stored in an ACB library.

The actual loading of user data into a database is initiated and under the control of a load program 94, such as a user-written load program or the IMS-provided HD Reorganization Reload utility program. In either case, when initially invoked the IMS software will extract the specified DBD from a DBD library and convert it into a DMB (not shown), or extract the DMB 90 from a ACB library 92 (*see* Fig. 10) and place DMB into DMB pool 96. In Fig. 10, the DMB in buffer pool 96 is identified by reference numeral 98. The DMB is the control block which IMS uses to manage the loading of user data into an IMS database. It is also the control block used to subsequently process the database. It is the user's responsibility to provide the DMB for IMS to use. IMS has no way of knowing if the DMB used to create the database is identical to the DMB which should be used to subsequently process the database. If they are different, the integrity of the database is at risk.

Fig. 10 further illustrates that, in the present invention, a copy of the DMB used to load the database is saved in the database. At the point in time when the IMS software opens the database datasets for loading, a program 100 obtains control to initialize itself. Program 100 obtains a copy of the DMB from IMS and stores it into the Directory Dataset 102 of the database 104. In Fig. 10, the DMB in Directory Dataset 102 is identified as reference manual 106. The DMB 106 thus becomes a permanent part of the database. The DMB is stored within the database as one or more database records and assigned a unique location, such as the first records of the database. After the DMB used to load the database is stored in the database, it is maintained there.

Fig. 11 depicts what happens when a user program is scheduled to process the database 104. The IMS software must first obtain a DMB 90 which describes the user-requested database. The DMB may be dynamically constructed from a DBD found in a DBD library or a previously generated

DMB found in an ACB library may be used. At the point in time when the IMS software opens the database datasets for processing, program 100 obtains control. Program 100 extracts a copy of the DMB 98 built by IMS and also extracts the DMB 106 from the database 104 that was placed there when the database was loaded (*see* Fig. 10). These two DMBs are compared. The physical characteristics described in these two DMBs should be identical. If they are not synchronized, subsequent processing of the database could cause any number of serious database integrity problems. To prevent any database damage, Program 100 alerts the user, and/or suspends any further processing of database 104 at least until the two database definitions become synchronized."

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Claims 1-18 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.
  
2. Claims 1-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,745,748 to Ahmad et al. ("*Ahmad*").

## **VII. ARGUMENT**

### **A. Claims 1-18 comply with 35 U.S.C. § 112, First Paragraph**

Appellant's originally filed independent claim 1 sets forth "storing a copy of said description [for said IMS database] . . . within said database" and "before accessing said database, comparing said copy of the said description with said description stored in said data management block." *See* originally filed claim 1. In response to the Examiner's rejection of the claims under 35 U.S.C. § 101, Appellant amended the above quoted language in claim 1 to state: "storing a copy of said description [for said IMS database] . . . within said first portion of said database" and "before accessing said second portion of said database, comparing said copy of the said description with said description stored in said data management block." *See* originally filed claim 1. In the Examiner's Final Office action, the Examiner states that the claims fail to comply with the written description requirement,

arguing that "the description does not discuss the first and second portion of an IMS database now being claimed." For the reasons discussed below, Appellant respectfully disagrees.

Section 2163.02 of the MPEP states the following:

The courts have described the essential question to be addressed in a description requirement issue in a variety of ways. An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983)).

...

The subject matter of the claim need not be described literally (i.e., using the same terms or in *haec verba*) in order for the disclosure to satisfy the description requirement.

Appellant notes that the application does reasonably convey to an artisan that the description for the IMS database can be stored in a first portion of the database which is separate from a second portion of the database. Specifically, the application states: "The DMB<sup>1</sup> is stored within the database as one or more database records *and assigned a unique location, such as the first records of the database.*" P. 19, line 23 – p. 20, line 2. Thus, the application reasonably conveys to persons of ordinary skill in the art that the description for the IMS database can be stored in a first portion of the database (e.g., "the first records of the database") which is separate from a second portion of the

---

<sup>1</sup> Independent claim 1 states that the description for said IMS database is stored in a data management block (DMB).

database (e.g., the other records of the database). Thus, claims 1-18 clearly satisfy the written description requirement.

**B. Claims 1-18 are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Ahmad**

The Examiner further rejected claims 1-18 under 35 U.S.C. 103(a) as being unpatentable over *Ahmad*. Appellant submits that claims 1-18 are allowable over *Ahmad* for at least the reasons discussed below. Appellant respectfully submits that the Examiner has not met the Examiner's burden of factually supporting a *prima facie* conclusion of obviousness.

It is the Examiner's burden to factually support any *prima facie* conclusion of obviousness. The Examiner's duty may not be satisfied by engaging in impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the prior art. See MPEP §§ 2141-2144.

In a recent decision from the United States Court of Appeals for the Federal Circuit, the Federal Circuit noted that when the patent examiner and Board "rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record." *In re Sang-Su Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002). Specifically, the Federal Circuit noted that conclusory and subjective opinions about what is "basic knowledge" or "common sense" by themselves do not adequately support a determination of unpatentability. See *Id.* at 1343-44. Thus, the Federal Circuit held that findings of obviousness based on "common knowledge" must be supported by documented evidence that such knowledge exists. See *Id.* at 1344-45.

The Examiner admits that *Ahmad* does not teach several elements of the pending claims. Here, the Examiner has only offered conclusory and subjective opinions that these claim elements not taught by *Ahmad* would have been "obvious" or "well-known." The Examiner has not supported such statements with documented evidence, as he was required to do. Accordingly, the claims

rejected under § 103 are allowable over *Ahmad* for at least this reason.

Furthermore, the Examiner only cites to Column 6, lines 6-38 of *Ahmad* as supposedly teaching the claimed invention of claims 1-18. The Examiner admits that *Ahmad* does not teach several of the claimed elements. However, the Examiner has not provided sufficient evidence that *Ahmad* teaches at least one other fundamental limitation of Appellant's claims: storing a copy of said description for said IMS database within the database (see claim 1). Not only does the Examiner not provide sufficient evidence for this limitation, the excerpt in *Ahmad* cited by the Examiner teaches away from this limitation. *Ahmad* describes the database description being stored in auxiliary files separate from the database:

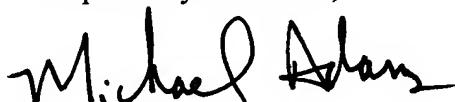
Accessing IMS or other database data often requires reference to auxiliary files containing information about the data. In the IMS environment, a Database Description (DBD) describes the physical structure of the data.

Col. 6, lines 15-19. Thus, this is an additional significant reason that independent claim 1 and dependent claims 2-18 are patentable over *Ahmad*.

## **CONCLUSION**

For the above reasons, Appellant respectfully submits that rejection of pending Claims 1-18 is unfounded. Accordingly, Appellant requests that the rejection of Claims 1-18 be reversed.

Respectfully submitted,



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**CERTIFICATION UNDER 37 C.F.R. § 1.8**

I hereby certify that this correspondence, along with all attachments, is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Appeal Briefs – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on July 7, 2006.



Signature

## CLAIMS APPENDIX

1. A method of ensuring that an IMS database and a description for said IMS database, are synchronized, wherein said description is stored in a data management block, and wherein said database comprises a first portion and second portion, the method comprising:
  - storing a copy of said description, used to load said database, within said first portion of said database, wherein said copy is maintained in said database;
  - before accessing said second portion of said database, comparing said copy of the said description with said description stored in said data management block; and
  - determining whether said copy of said description and said description stored in said data management block are synchronized.
2. The method of claim 1, wherein said comparing step occurs before each access to said second portion of said database.
3. The method of claim 1, wherein said copy of the database description is stored within said database as one or more database records.
4. The method of claim 3, wherein said one or more database records are stored in said database in a unique location which is dependent on said database's organization.
5. The method of claim 1, further comprising the step of taking responsive action if said copy of the description and said description stored in said data management block are not synchronized.
6. The method of claim 5, wherein said responsive action includes alerting a user of a problem with said description.
7. The method of claim 5, wherein said responsive action includes suspending further activity with regard to said database.
8. The method of claim 7, wherein said further activity is suspended until said descriptions become synchronized.

9. The method of claim 5, wherein said comparing step occurs before each access to said second portion of said database.

10. The method of claim 5, wherein said copy of the database description is stored within said database as one or more database records.

11. The method of claim 10, wherein said one or more database records are stored in said database in a unique location which is dependent on said database's organization.

12. The method of claim 9, wherein said responsive action includes alerting a user of a problem with said description.

13. The method of claim 9, wherein said responsive action includes suspending further activity with regard to said database.

14. The method of claim 13, wherein said further activity is suspended until said descriptions become synchronized.

15. The method of claim 10, wherein said responsive action includes alerting a user of a problem with said description.

16. The method of claim 10, wherein said responsive action includes suspending further activity with regard to said database.

17. The method of claim 16, wherein said further activity is suspended until said descriptions become synchronized.

18. A program storage media readable by a machine and containing instructions for performing the method contained in claim 1.

**EVIDENCE APPENDIX**

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellant in the Appeal.

**RELATED PROCEEDINGS APPENDIX**

There are no related proceedings to the current proceeding.

# **EXHIBIT**

# **A**



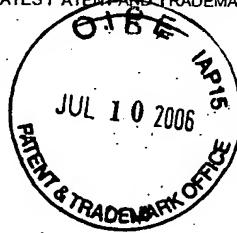
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JANUARY 05, 2005

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WINSTEAD SECHREST & MINICK P.C.  
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ASSIGNOR:

PEREGRINE BRIDGE TRANSFER  
CORPORATION

DOC DATE: 08/16/2002

ASSIGNEE:

NEON ENTERPRISE SOFTWARE, INC.  
14100 SOUTHWEST FREEWAY  
SUITE 400  
SUGARLAND, TEXAS 77478

SERIAL NUMBER: 10036815

FILING DATE: 10/19/2001

PATENT NUMBER:

ISSUE DATE:

TITLE: ENSURING THAT A DATABASE AND ITS DESCRIPTION ARE SYNCHRONIZED

015519/0455 PAGE 2

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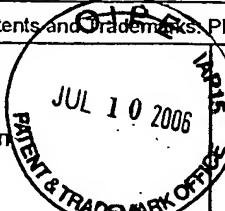
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## 1. Name of conveying party(ies):

Peregrine Bridge Transfer Corporation

Additional name(s) of conveying party(ies) attached?  Yes  No

## 3. Nature of conveyance:

- Assignment       Merger  
 Security Agreement       Change of Name  
 Other \_\_\_\_\_

8/16/2002

Execution Date: \_\_\_\_\_

## 4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

A. Patent Application No.(s) 10/036,815

B. Patent No.(s) \_\_\_\_\_

Additional numbers attached?  Yes  No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

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Internal Address: Winstead Sechrest &amp; Minick P.C.

P.O. Box 50784

Street Address: \_\_\_\_\_

City: Dallas State: TX Zip: 75201

6. Total number of applications and patents involved:  1  2  3

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CLIENT/MATTER NO: 39802-P005US

DOCUMENT NO.: Austin 253775



**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION**

**OF**

**PEREGRINE/BRIDGE TRANSFER CORPORATION**

PEREGRINE/BRIDGE TRANSFER CORPORATION (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "GCL"), in order to amend its Certificate of Incorporation pursuant to Section 242 of the GCL, certifies as follows:

1. The name of the Corporation is Peregrine/Bridge Transfer Corporation. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of Delaware on November 1, 1995.

2. Pursuant to the applicable provisions of Section 242 of the GCL, the Board of Directors of the Corporation, by Unanimous Written Consent dated as of August 16, 2002, duly adopted a resolution setting forth the following amendment to the Corporation's Certificate of Incorporation and declaring such amendment advisable.

3. The sole stockholder of the Corporation, pursuant to the provisions of Section 228 of the GCL, by Written Consent dated as of August 16, 2002, duly adopted such amendment.

4. The authorized capital of the Corporation shall be increased from 1,000 shares of common stock, \$0.001 par value per share, to 11,000 shares of common stock, \$0.001 par value per share, by reason of this amendment.

5. Article 1 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

**ARTICLE 1**

The name of the Corporation is NEON Enterprise Software, Inc. (the "Corporation").

6. Article 4 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

**ARTICLE 4**

The Corporation is authorized to issue one class of shares to be designated Common Stock. The total number of shares of Common Stock this Corporation shall have the authority to issue is 11,000, with par value of \$0.001 per share.

7. Article 5 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

**ARTICLE 5**

The name and mailing address of the agent for service of process for the Corporation are as follows:

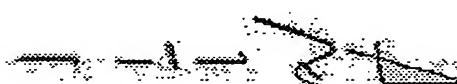
Wayne E. Webb Jr.  
NEON Enterprise Software, Inc.  
12680 High Bluff Dr., Suite 200  
San Diego, CA 92130



\* \* \*

Peregrine/Bridge Transfer Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer as of August 16, 2002.

**PEREGRINE/BRIDGE TRANSFER CORPORATION**

By: 

James Bradford Poynter  
Chief Financial Officer and Secretary